

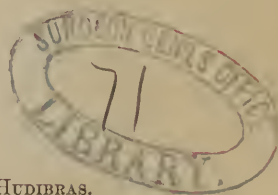
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Rogers (S.)

COMPLIMENTS OF THE AUTHOR.

THE  
NEW MEDICAL LAW OF THE STATE  
OF NEW YORK.

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"I who was once as great as Cæsar,  
Am now reduced to Nebuchadnezzar;  
And from as famed a conqueror  
As ever took degree in war,  
Or did his exercise in battle,  
By you turned out to grass with cattle."—HUDIBRAS.



As a salutatory address to the "virtuous Legislature of 1874" we know of nothing more appropriate for this new-born law than the above quotation, as the accompanying history of it will show. This law, which by general statute became operative on June 1, 1874, is entitled "AN Act to regulate the Practice of Medicine and Surgery in the State of New York."

The title is old, several previous acts having had about the same. Judging from the probable effect of the law, its title is quite as appropriate as that of the act of 1814 relative to certain county medical societies, which read as follows: "AN Act to raise money to build a bridge over Allen's Creek, in the town of Le Roy, and for other purposes." This one regulates the practice of medicine as one of that title would.

It will be seen, by the comparison we below give, whence it is extracted, and by most readers also, what a legislative monstrosity it is. As originally presented in the Senate, the word *midwife* was retained, but it did not get through the Legislature; a fact which may perhaps be credited to the hopeless ignorance, in matters of medicine, of the average legislator, not understanding the dangerous character of a large majority of so-called midwives.

The bill has in fact come into legal life without a midwife, and, in addition to its having been conceived in weakness, as will be seen, has been destructively crippled during parturition. It may, with striking propriety, be called a legislative "what is it," for, had it not received the approval of so serious, so practical and astute, and so patriotic a man as Governor Dix, it might have been justly regarded as one of the higher sort of burlesque acts which have occasionally, from all time, served as nonsense to relieve our annual Solons at Albany from their oppressive wisdom. Its antecedent history is as follows:

Under the auspices of the New York Medico-Legal Society, and after a careful study of the whole subject, during a period of more than two years, a bill was agreed upon by both the medical and legal members of the committee in charge of the matter, and presented to the Legislature in Assembly, January 24, 1872, with the title of "AN ACT to protect the People against Quackery and Crime."

The State of New York paid for printing it, and, almost at once, copies of it were extensively circulated among all classes, supposed to be unfavorably affected by its provisions, but with the addition of a front page, bearing in attractively large type the following:

### **"NOTICE AT ONCE !**

"The immediate attention of every physician, not a member of an Allopathic County Medical Society; of every advertising physician; of every proprietor of a patent medicine, *and of every druggist* who does a counter-practice, is called to the accompanying iniquitous act,<sup>1</sup> the passage of which would interfere with, or cause a total destruction of business; for who, after outraging the allopathic code of medical ethics, would be allowed, under any circumstances, a license, no matter how well qualified he might be !

"The passage of such an act means ruin to many, and loss to all, who are outside the pale which a bigoted and selfish school is endeavoring to raise, for the purpose of enriching themselves, under the pretext of anxiety for the pub-

<sup>1</sup> The attention of the profession, and of the members of that Legislature, is called to the member of the Public Health Committee of that year, who habitually used this term.

lic good. Publishers of newspapers should remember that it is not the regulars who pay, and that the passage of this act would seriously affect their balance-sheet.

"This bill has already been read twice, and it behooves every one interested to act at once, and use all their personal interest with members, and otherwise, to prevent its becoming a law.

"Let each one act, and act promptly!"

Clairvoyant power is not needed to see that this circular was written by a medical man well informed in all the tricks of mountebanks and ignorant practitioners. Of course, its object was of the *black-mail* kind.<sup>1</sup>

The prospects of its passage having been thus ruined—we cannot say at what cost to the quacks—the same bill was introduced in Assembly, March 13th, of the same year, under the title of "AN ACT relative to the Medical Laws of the State of New York," and, after passing both Houses, was vetoed by the Governor, in accordance with the advice of one of the oldest physicians in Albany—who opposed it on the ground that it is not the business of the medical profession, nor of the law, to interfere for the protection of citizens from exposure to the chances of becoming the victim to false pretenses, whether the pretender be an ignorant doctor or an ignorant lawyer. It was again introduced during the session of 1873, but, for want of what is called *pushing*, arrived at no definite stage. The "virtuous though poor" Legislature of 1874 has again revived it, and what the result has been the reader can judge, as we give all the essential points of the original bill of 1872, together with its absurd extract.

#### THE BILL OF 1872.

§ 4. It shall be the duty of the aforesaid censors of the county and district medical societies, and they are hereby empowered at their discretion to summon before them, and to examine relative to professional qualifications, any person or persons resident in their respective counties or districts, who,

<sup>1</sup> To the everlasting shame of the State Medical Society, it voted to also disapprove the bill, both in 1872, and, as we are informed, in 1873, thus aiding and abetting this infamous proceeding. It is just, however, to state that the vote was a very small one, quite one-sided, and very cliquy.

by sign, or advertisement, or by any means whatever, offer their services to the public as practitioners of either medicine, surgery, or midwifery, or who, by such sign or advertisement, simply style themselves doctor; and if such examination satisfy said censors that the person examined is qualified to practise, said censors shall issue a certificate to such person expressive of the branches of the medical art they find said person qualified to practise, and such certificate shall be lawful authority throughout this State to practise in all the branches of medicine therein mentioned; and any such certificate permitting to practise medicine or surgery shall be accepted by the various aforesaid medical societies as sufficient evidence of professional qualification for membership in them. Said censors may also revoke any certificate so granted, if, in their judgment, the person holding it has, by crime or misdemeanor whereof such person shall have been duly convicted, forfeited all right to the public confidence; and the aforesaid censors shall keep a book or register, in which they shall enter the names, place of business, name of the college, or other source of the diploma or license, of all to whom they issue the aforesaid certificates.

§ 5. Every practitioner of medicine, surgery, or midwifery in the State, shall be required, and they are hereby commanded, to obtain the aforesaid certificate from the censors of some one of the aforesaid medical societies of this State, which certificate shall set forth that said censors have found the person to whom it was issued qualified to practise all of the branches of the medical art mentioned in it; and said certificate must be recorded in a book provided and kept for the purpose by the county clerk of each county in the State. Said book so provided and kept in the county clerk's office, shall bear the title and inscription, and shall be called the Medical Register of the respective county in which it is kept; and it shall provide for the name, in full, of the person whose certificate is therein recorded, date and place of its issue, branches of the medical art it permits to practise, names of the censors who have signed it, and a place for such additional remarks as may be of public interest; and for making such record the county clerk may collect twenty-five cents. The aforesaid Medical Register shall be always accessible, for reference, to all registered physicians, surgeons, midwives, and officers of boards of health; and any person who shall practise medicine, surgery, or midwifery in the State of New York, or who shall sign a certificate of death for purposes of burial or removal, whose aforesaid certificate from the censors is not found recorded in the aforesaid Medical Register of the county wherein such person is

actually practising, may be proceeded against for violation of the provisions of this act.

§ 6. In the exercise of the discretionary power permitted by the fourth section of this act, the said censors may register the names of, and issue certificates to, all physicians or surgeons admitted to membership in their respective societies, without examination. And also to all such persons as may furnish evidence, by diploma from some medical college or university, or by certificate from some one of the aforesaid medical societies of this State, which shall satisfy said censors that the person so presenting credentials, has been deemed, after due examination, by a legally authorized faculty or board, as properly and adequately educated to practise the branches to which such person pretends, and the certificate so issued by the censors of any of the aforesaid societies of this State shall, unless it have been previously revoked by such society, be valid for all the purposes of this act, in every county of this State; and for neglect or failure to record the same in the aforesaid county Medical Register of the county in which the person holding it is actually practising, the person so neglecting, thirty days after notification, shall be liable to a fine of twenty-five dollars, and which the president of any such medical society shall sue for and collect, and such fine, when collected, shall be placed in the hands of the treasurer of such society as part of its funds.

§ 8. The censors of each medical society aforesaid shall notify the resident practitioners of medicine, surgery, and midwifery, in their respective counties or districts, of the terms and requirements of this act, and shall request such persons, so notified, to comply with those requirements within thirty days after such notification; and if such person shall not, within the time specified in the notice, or within such further time as may be allowed by special arrangement with said censors, not exceeding ninety days, comply with the requirements herein made of physicians, surgeons, or midwives, as the case may be, such person shall be subject to all the provisions and penalties prescribed by this act for any violation of the same, and the president of the society making such request shall, and he is hereby required to at once, commence the proceedings authorized by this act against such person.

§ 9. It is hereby declared a misdemeanor for any person to practise medicine, surgery, and midwifery in this State, unless authorized so to do by a license or diploma as herein described, which shall be approved by the aforesaid censors; or who shall so practise under cover of a medical diploma fraudulently or illegally obtained; or who shall not have a certificate from said censors, expressive of approval of the qualification of such person to practise all the branches named

in such certificate, ascertained by an examination before said censors; and any person found guilty of such misdemeanor shall be punished by imprisonment not less than one month, nor more than one year, or by a fine of five hundred dollars, at the discretion of the court before whom such person may be convicted; and all such fines, when collected, shall go into the treasury of the county medical society bringing the action.

#### THE PRESENT LAW.

#### LAWS OF NEW YORK.—BY AUTHORITY.

[Every law, unless a different time shall be prescribed therein, shall commence and take effect throughout the State, on and not before the twentieth day after the day of its final passage, as certified by the Secretary of State. Section 12, title 4, chapter 7, part 1, Revised Statutes.]

#### CHAPTER 436.

#### AN ACT to regulate the Practice of Medicine and Surgery in the State of New York.

PASSED May 11, 1874.

*The People of the State of New York, represented in Senate and Assembly, do enact as follows :*

SECTION 1. Every practitioner of medicine or surgery in this State, excepting licentiates or graduates of some medical society or chartered school, shall be required, and they are hereby commanded to obtain a certificate from the censors of some one of the several medical societies of this State, either from the county, district, or State society; which certificate shall set forth that said censors have found the person to whom it was issued qualified to practise all of the branches of the medical art mentioned in it. And such certificate must be recorded in a book provided and kept for the purpose by the county clerk of each county in the State.

§ 2. The censors of each medical society aforesaid shall notify all practitioners of medicine and surgery of the terms and requirements of this act, and shall request such persons, so notified, to comply with those requirements within thirty days after such notification; and if such persons shall not, within the time specified in the notice, or within such further time as may be allowed by special arrangement with said censors, not exceeding ninety days, comply with the requirements herein made of physicians or surgeons, as the case may be, such persons shall thereafter be subject to all the provisions and penalties prescribed by this act for any violation of the same,

and the president of the society making such request shall, and he is hereby required to, at once commence the proceedings authorized by this act against such person.

§ 3. It is hereby declared a misdemeanor for any person to practise medicine or surgery in this State, unless authorized so to do by a license or diploma from some chartered school, State board of medical examiners, or medical society, or who shall practise under cover of a medical diploma illegally obtained; and any person found guilty of such misdemeanor shall, for the first offense, be fined not less than fifty nor more than two hundred dollars. For any subsequent offense, not less than one hundred nor more than five hundred dollars, or by imprisonment not less than thirty days, or by both imprisonment and fine; and all such fines shall go into the county treasury of the county bringing such action.

STATE OF NEW YORK, }  
Office of the Secretary of State. } ss.:

I have compared the preceding with the original law on file in this office, and do hereby certify that the same is a correct transcript therefrom, and of the whole of said original law.

DIEDRICH WILLEES, JR.,  
Secretary of State.

In this exhibition of the two bills, only such sections of the original bill are given as have been, even in the slightest way, alluded to in the now existing law. In the apparent effort to simplify the original, it will *perhaps* be seen that every element of vigor and practicability, as respects public need, has been, so to speak, squeezed out. While it requires "every practitioner of medicine or surgery" to obtain a certificate or license from the censors named, it, at the same time, excepts nearly all of them, or at least permits such a multitude of exceptions to its requirements, that it defeats its own objects, as well as those of the bill of 1872, and completely abolishes the means which that bill provided for compelling every one practising, or offering to practise, to obtain a license. The law applicable to and defining the duties of such censors, as respects granting licenses, is only conditionally obligatory, to wit: if the party present certificate of study under pupilage for a prescribed time, then the censors are obliged to examine. This new law would find large numbers—and many very worthy practitioners—totally unable to comply with the requirements of existing law or ordinance for even *admission*

to examination. The result would, in many cases, be great oppression and wrong to persons quite as competent to practise as those who are designated to examine them. By this law, *competence* is not the chief requirement, but the compliance with certain routine regulations as to time spent in study, out of and in college—confessedly the worst possible test of one's qualification to practise the art of medicine. The bill of 1872 required the examination of all unlicensed persons practising, regardless of place or time of study, and, if found competent, gave them right to a license. This law, by requiring the registration, in the county clerk's office, of the certificates issued to these previously unlicensed persons only, has rendered the discovery of such persons practically impossible, and consequently itself a dead letter. The original bill required every person practising, or offering to practise, to be registered. Under its provisions, an inspection of the register would furnish all the evidence required by the censors, to summon any party before them to present credentials or submit to examination.

The feeblest mind, it seems to us, ought to see at once that the only way to control licenses is, first, to register all about whose qualifications no doubt is entertained. That done, the reaching of the doubtful practitioners is a mere matter of official routine.

By the actual law, the censors are required to notify *all* practitioners of its requirements, notwithstanding the fact that it makes no requirement whatever of licensed practitioners. As it provides no means by which the censors can ascertain whether any man or woman has a license or not, parties receiving such notification will be foolish to pay any attention to it, particularly if they have no license. Things will remain precisely as they are, unless an informer volunteers his services. The allegations of informers may be sufficient to move a district attorney, but we doubt if they will be acted upon by presidents of county medical societies, who, by one section of this incoherent legislative farce, are required to "*commence proceedings*," while, in another, it speaks of the county as bringing the action.

This law requires very considerable expense, in both time

and money, of the medical societies, and then turns the fines, if any be collected, into the county treasury, instead of into that of the society bringing the action, as the original one did, where it would at least partly pay the expenses of the society's labor for the public good. It is possible that this law may be of limited applicability in rural districts, where the privacy of life is unknown; but, in the metropolis, and in the large cities and villages, it may at once be regarded as a joke; and the practitioners therein have only to go quietly on, as if no such law existed, and let

“Not a wave of trouble roll  
Across their peaceful breasts.”

The bill of 1872 could no doubt be reduced to half its original length, and still remain a most effective and useful law; but this miscarriage is a scandal to medical legislation, and a disgrace to its progenitors. It is a new proof of the fatuity of the average medical legislator.

STEPHEN ROGERS, M. D.

